Filed 5/31/19 In re A.C. CA4/2

NOT TO BE PUBLISHED IN OFFICIAL REPORTS

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FOURTH APPELLATE DISTRICT

DIVISION TWO

In re A.C., a Person Coming Under the Juvenile Court Law.	
SAN BERNARDINO COUNTY CHILDREN AND FAMILY SERVICES, Plaintiff and Respondent, v. D.C., Defendant and Appellant.	E071854 (Super.Ct.No. J272835) OPINION

APPEAL from the Superior Court of San Bernardino County. Steven A. Mapes, Judge. Affirmed.

Joseph T. Tavano, under appointment by the Court of Appeal, for Defendant and Appellant.

Michelle D. Blakemore, County Counsel, Jamila Bayati, Deputy County Counsel for Plaintiff and Respondent.

D.C. (mother) appeals from the juvenile court's orders denying a hearing on her petition for modification under Welfare and Institutions Code[1] section 388, and terminating her parental rights to A.C. (minor) under section 366.26. For the reasons set forth below, we affirm the court's denial of mother's section 388 petition and the termination of mother's parental rights under section 366.26.

FACTUAL AND PROCEDURAL HISTORY

A. DETENTION AND JURSIDICTION/DISPOSITION

In July of 2016, mother gave birth to minor; mother was 15 years old.[2]

One year later, in July of 2017, San Bernardino County Children and Family Services (CFS) received two referrals indicating that mother, who was still a minor, was (1) leaving minor home alone at night until around 3:00 a.m.; and (2) wandering around the streets all day in the heat with minor, without taking provisions for her. On July 28, three social workers responded to the home of the maternal grandmother (MGM), where mother was residing with her siblings and minor. The home was cluttered with objects. Mother was advised to clean the house as the clutter posed a fire hazard. During this contact, mother denied leaving minor at random hours of the night. Mother, however, admitted that she wandered the streets with minor.

On August 14, 2017, two social workers returned to MGM's home, which was still cluttered. "The home was observed to be making minimal progress." MGM confirmed

---

[1] All further statutory references are to the Welfare and Institutions Code unless otherwise specified.

[2] The alleged father, "Joseph Unknown," is not a party to this appeal.

that mother left the home with minor for days, and that MGM had to pick minor up from the homes of various individuals with whom mother had left her. MGM was concerned that mother was using drugs.

On September 8, 2017, social workers visited mother's home unannounced. Mother and minor were present. Mother reported that minor's scabies "are coming back and she was 'unsure' when she was going to take [minor] back to the doctor." The social worker observed mother "to be dirty" and minor "was observed to have small circular dots all over her skin." Mother attributed the dots to scabies. The doctors informed mother that scabies came from dirty linen. Mother stated that she ran away from MGM's home because they did not get along. Mother only returned to MGM's home because MGM reported mother as a runaway.

On September 12, 2017, the social worker obtained warrants and attempted to detain mother and mother's three siblings out of MGM's custody, and to detain minor out of mother's custody. Mother's adult sister was the only person home. She stated that mother ran away a few days earlier with minor; this was later confirmed by MGM.

On September 14, 2017, CFS filed a section 300 petition to protect minor, and four section 300 petitions to protect mother and mother's siblings. The section 300 petition regarding minor, which was later amended and sustained, alleged that (1) mother failed to follow up with medical requirements for minor's scabies and repeatedly ran away from home with minor (§ 300, subd. (b) [failure to protect]); and (2) that minor's unknown father left minor without care and support (§ 300, subd. (g) [no provision for

support]). The petition also alleged that mother's substance abuse placed minor at risk; this allegation was not proven when litigated.

Mother and minor failed to appear at the detention hearing on September 15, 2017. The juvenile court found that a prima facie showing had been established that minor was the person described in the section 300 petition, and ordered minor detained. Later on the same day, minor was located at the home of the maternal great-grandmother, and placed in the home of a maternal cousin, Mrs. G. CFS also located mother and placed her in foster care. Mother went AWOL for approximately a week, leading to her placement in a group home.

In the jurisdiction/disposition report dated October 5, 2017, CFS recommended that the court sustain the petition, remove minor from mother, and order family reunification services to mother. Mother denied abusing substances, but admitted to consuming alcohol. Regarding minor's scabies, mother claimed that she took minor to the doctor. The doctor told mother to wait and see a dermatologist if the scabies did not clear up in two weeks. She denied leaving the house with minor during the day unless it was to get milk or diapers. Mother stated that she would leave at night because she and MGM would get in to arguments, and MGM would tell mother to leave. Mother believed that MGM was using drugs. Mother and her sister also engaged in physical contact, and mother claimed that her sister was mean to minor. Mother was a junior in high school and behind in credits. She was previously a dependent child because of MGM's drug addiction and neglect. Mother attended supervised visits with minor; they appeared to be bonded with each other.

At the jurisdiction/disposition hearing on October 5, 2017, the juvenile court addressed paternity issues. Mother stated that one possible father for minor was "Joseph," or "Joe," with whom mother was "messing with" for a time. Mother did not know Joe's last name or his address. "Adrian" was also a potential father. Mother "would go meet [Adrian] and his friends at motels." She did not know his last name. Another possible father was "Dazer." Mother met him in a motel. The court stated its concern that mother was sexually exploited, which mother denied. The juvenile court then set a jurisdiction/disposition trial for November 30, 2017, and warned mother of her need to be consistent, and not to think about other people outside of minor.

On October 5, 2017, mother filed a Judicial Council form ICWA-020 which indicated that mother had no Indian ancestry as far as she knew.

According to the additional information to the court filed November 30, 2017, mother completed a drug screening and was negative for substances. Mother, however, ran away from her group home placement on November 25, 27, and 29; she came and went as she pleased. Mother's behavior precluded the ability of CFS to place mother in a foster home with minor.

At the jurisdiction/disposition hearing on November 30, 2017, mother was present. The court noted that mother looked tired and mother replied, "I am." Mother admitted that she went to bed around 2:00 a.m. The juvenile court lectured mother about her need to reform, and his inability to return minor safely to mother if she continued to "go AWOL." Mother argued that she was "not doing anything." The court told mother that

she was not fooling anyone and said that "it's time to grow up if you want your kid back."

Thereafter, the juvenile court sustained the section 300 petition; removed minor from mother's custody; found minor's placement appropriate and necessary; ordered family reunification services for mother with supervised visits to occur at least weekly for two hours; and approved a case plan for mother that included general counseling, a parenting education plan, and substance abuse testing with a program required if mother tested positive or missed a test. The court found that minor's father was alleged and not entitled to services.

B. SIX- MONTH REVIEW HEARING

In the status review report filed on May 9, 2018, CFS reported that mother continued to live an unstable lifestyle. Mother had difficulty attending school and did not take responsibility for her actions. Mother had a pattern of leaving the group home for a few days, returning for one or two days, then leaving again. Mother had not consistently visited minor because of her constant AWOL behavior. Mother had attended four sessions of individual therapy and parenting education, but failed to attend classes since February 2018. It appeared that MGM contemplated absconding with minor so mother's visiting location was changed. When mother invited MGM to a subsequent visit, the visit was terminated for minor's safety. MGM was arrested after law enforcement determined that she had mother in her custody, in violation of court orders. Because mother was almost 18, she felt residing with MGM was her best option.

CFS recommended that family reunification services be terminated for minor, and recommended the adoption of minor by the G. family. Minor was almost two years old. When first placed, minor had several excessive tantrums, stuffed her mouth full when eating, and always wanted to eat. The G. family provided structure and guidance and helped minor with her behavior. Minor became attached to the G. family. The G. family and minor were affectionate with each other.

At the six-month review hearing on May 16, 2018, the juvenile court set a trial date for June 19, 2018. The court also placed mother on a trial visit with MGM. Within a week, mother was returned to CFS custody; MGM was reportedly using methamphetamine. Mother tried to redirect MGM's erratic behavior, which led to mother and MGM engaging in physical altercation, and to MGM's placement on a 5150 psychiatric hold.

On May 21, 2018, mother went AWOL after visiting minor. Mother was placed on a random drug testing regiment and failed to appear for a test on June 4, 2018. She was also unavailable to be referred to more family reunification services.

At the trial on June 19, 2018, mother did not appear. The court found that the return of minor to the custody of mother would create a substantial risk of detriment to minor's physical and emotional well-being. The court also found that (1) reasonable reunification services had been provided or offered to mother, which were designed to aid mother in alleviating the causes that brought the matter before the court; (2) mother had failed to regularly participate and make substantive progress with the provisions of the case plan; and (3) there was not a substantial probability that minor could be returned to

mother within the statutory time frame. The court then terminated reunification services and set the matter for a hearing on October 17, 2018, pursuant to section 366.26.

C. SECTION 366.26 REPORT

In the section 366.26 report filed October 12, 2018, CFS recommended termination of parental rights to permit minor's adoption by the G. family. Minor was 14 months old when placed with the G. family nearly one year prior. Minor was described as a healthy, adorable, and bright little girl. She had a strong attachment to Mr. and Mrs. G. whom she recognized as her parents. Mr. and Mrs. G. wished to adopt minor. Mrs. G. stated, "We love her like our own," and that "[s]he has come a long way since coming into our care."

Mr. and Mrs. G. met in 2003 and married in 2004. They had an eight-year-old daughter who lived with them. At the time of reporting, Mr. G. was 54. He worked as a control system technician and planned to retire in May of 2019. Mrs. G. was 37. She was an elementary school teacher. Mr. and Mrs. G. did not drink or use illicit drugs, and they cleared placement processing. They had a typical structured workweek. On weekends, they attended church, did chores, and attended family events. They felt it was important to raise children to be respectful of others.

On August 15, 2018, mother attended a supervised visit with minor. Minor was quiet but actively played with mother as mother held her. Minor appeared to enjoy the visit. On September 24, at another supervised visit, mother fed minor and played games with her. The visit went well. The G.s were willing to maintain a relationship between

minor and mother, as long as mother remained stable and it did not become inappropriate for mother to be around minor.

On October 17, 2018, mother's attorney indicated that he would be filing a section 388 petition on behalf of mother as she objected to the termination of her parental rights.

D. SECTION 388 PETITION

The morning of December 19, 2018, prior to the section 366.26 trial, mother filed a section 388 petition seeking reinstatement of reunification services. The petition indicated that mother was engaging in a parenting course, substance abuse treatment, group therapy and individual therapy through mother's group home placement. The petition was verified by mother's attorney. Mother's therapist indicated that mother decreased her AWOL behaviors, completed half of her parenting modules, and would complete all modules within two months. Mother had a difficult time in group therapy, but showed increased capacity to share details with her therapist. Mother was learning how her past trauma impacted her ability to cope in a healthy way. Mother was eight weeks into the "Seeking Safety" curriculum, about one-third through that class.

Mother's therapist also reported that mother abstained from substance abuse. The petition, however, failed to include evidence that mother submitted to any random drug tests, or even scheduled substance abuse testing. An October 18, 2018, contract signed by mother stated that attendees were welcome to return to the program if they relapsed, but could not attend sessions when intoxicated, or buy, sell, or use substances with other patients.

The petition stated that mother continued to love and care for minor, and "there is a parent child bond per the 26 report . . . that must continue." Moreover, mother continued to engage in services and to grow, and it was in minor's best interests to reunify with her biological mother.

The juvenile court read and considered mother's petition. The court found that mother's petition lacked a prima facie case indicating new evidence or a change of circumstances that suggested granting the petition would promote the child's best interests. The court denied mother's petition without a hearing.

E. SECTION 366.26 TRIAL

On December 19, 2018, at the section 366.26 trial, the juvenile court received the section 366.26 report into evidence.

Mother testified that she was 16 years old when minor was removed; mother was currently 18 years old. She and MGM were minor's primary caregivers when minor resided with them from birth to 14 months. Mother had not missed any of the visits with minor for the preceding six months. At the beginning of visits, minor ran to mother and said, "That's my mommy." Mother colored with minor, took pictures, read books with her, taught her how to count, and played with her. Mother did not need to redirect minor. Mother testified that the visits went well because she enjoyed being around minor, and that minor enjoyed being around mother. Minor was happy to see mother, wanted to sit by her, and play with her. At one visit, mother left to use the restroom and minor thought mother was leaving; minor tried to follow mother and looked like she was going to cry. Mother testified that minor called her "mommy."

Mother also testified that when visits were ending, she told minor that she loved her, and minor stated, "I love you, Mommy." On one occasion, minor was sad when the visit ended. Minor, however, never cried. Mother stated that minor did not see Mrs. G. as her mom. Instead, minor knew that mother was her mom.

Mother testified that she was younger when minor was removed and "didn't really care about what was happening. I was more worried about myself, but now I see, and I'm doing better now. I stopped drinking, not only for my daughter but for the baby I'm having right now." Mother did not want her parental rights terminated because "I have a bond with my daughter." She requested that the court choose a lesser permanent plan of legal guardianship or foster care.

At the conclusion of the hearing, the juvenile court found by clear and convincing evidence it was likely that minor would be adopted and ordered parental rights terminated. The court stated there "may be some bond from [minor] to the mother, but I can't say that is a parental bond from [minor]'s point of view." The court also did not believe that the benefits of maintaining the parent-child relationship between mother and minor outweighed the benefits of permanency and adoption.

F. NOTICE OF APPEAL

On December 19, 2018, mother filed her notice of appeal. On January 31, 2019, mother filed an amended notice of appeal.

DISCUSSION

A. SECTION 388 PETITION

Mother argues that the juvenile court "erred in denying mother a hearing on her request to change the court order."

Under section 388, a juvenile court order may be changed or set aside "if the petitioner establishes by a preponderance of the evidence that (1) new evidence or changed circumstances exist and (2) the proposed change would promote the best interests of the child." (*In re Zachary G.* (1999) 77 Cal.App.4th 799, 806.) "[I]f the liberally construed allegations of the petition do not make a prima facie showing of changed circumstances and that the proposed change would promote the best interests of the child, the court need not order a hearing on the petition." (*Ibid.*; § 388, subd. (d) ["If it appears that the best interests of the child . . . may be promoted by the proposed change of order, . . . the court shall order that a hearing be held"].) The prima facie requirement is not met "unless the facts alleged, if supported by evidence given credit at the hearing, would sustain a favorable decision on the petition." (*Zachary G.*, at p. 806.) We review the court's order denying a hearing for abuse of discretion. (*Id.* at p. 808.) "It is rare that the denial of a section 388 motion merits reversal as an abuse of discretion." (*In re Kimberly F.* (1997) 56 Cal.App.4th 519, 522.)

On appeal, mother argues that her circumstances had changed because "Mother was now fully participating in treatment, counseling, and parenting education, and as attested to by her therapist, had matured, grown, and changed."

A parent need only make a prima facie showing to trigger the right to proceed by way of a full hearing. (*In re Marilyn H.* (1993) 5 Cal.4th 295, 310.) "A 'prima facie' showing refers to those facts which will sustain a favorable decision if the evidence submitted in support of the allegations by the petitioner is credited." (*In re Edward H.* (1996) 43 Cal.App.4th 584, 593.) There are two parts to the prima facie showing: "A juvenile court order may be changed, modified or set aside under section 388 if the petitioner establishes by a preponderance of the evidence that (1) new or changed circumstances exist, and (2) the proposed change would promote the best interest of the child. [Citation.] The parent bears the burden to show both a ' "legitimate change of circumstances' " and that undoing the prior order would be in the best interest of the child." (*In re S.J.* (2008) 167 Cal.App.4th 953, 959; see also, § 388, subd. (d).)

In this case, mother contends that she presented a prima facie case of changed circumstances. We disagree. Here, when minor was detained at 14 months old, mother, who was 16 years old, repeatedly ran away from MGM's home, with and without minor. She engaged in risky behavior with adult men, visited motels, abused alcohol, and left minor with people who then called MGM to go and pick minor up. Moreover, mother inadequately treated minor's scabies; and MGM's residence, where mother and minor resided, was cluttered and unsafe. After dependency commenced, mother continued to run away from home and her responsibilities, and she was placed in a group home. Even at the group home, she continued to go missing so minor could not be safely placed with mother.

When the juvenile court ordered family reunification services for mother, the court reminded her that she needed to stop going missing and needed to be more responsible to regain custody of minor. Mother responded, "I'm not doing anything." Although mother's plan required her to attend therapy, a parenting program, and random drug testing, with a substance abuse treatment program if she tested positive or missed a test, she again went AWOL from placement for days at a time, and missed random drug testing. Unfortunately, in February of 2018 when mother went AWOL she was raped. But she went AWOL again in March. In June 2018, the court terminated family reunification services because mother made minimal progress with her case plan.

After the juvenile court set a trial date, mother resumed services in October of 2018. By the trial date in December, mother was approximately a third of the way through a "Seeking Safety" curriculum, and halfway through a parenting course. She attended group and individual therapy. Although the therapist reported that mother "has shown a decrease in prior behaviors, such as AWOL," the therapist did not state that mother had stopped going AWOL. Moreover, mother's therapist reported that mother had abstained from substance abuse. However, there was nothing provided in the petition that mother participated in random drug testing.

At the hearing on the section 388 petition, the juvenile court stated: "I don't see changed circumstances. I see changing circumstances. I don't see best interest to [minor] or even prima facie thereof. [¶] So, at this time, I will deny the 388 request by the mother. But I appreciate whatever progress she has made and the fact she is trying to work on things." We agree with the juvenile court.

Mother's reliance on *In re Hasem H.* (1996) 45 Cal.App.4th 1791, is not persuasive. There, the child was detained because the mother had mental health issues. The mother, however, actively engaged in family reunification services and eventually graduated to overnight visits with her child. (*Id.* at pp. 1792-1796.) The mother's therapist opined the child could safely be returned to the mother. (*Id.* at pp. 1797-1798.) Here, as provided above, the record clearly showed that mother never graduated beyond supervised visits, spent much of the first review period AWOL from group homes, and had only participated in family reunification services for approximately two months. After the juvenile court terminated mother's family reunification services in June of 2018, she did not recommence services until one day after the section 366.26 hearing in October of 2018. A parent's history is the best predictor of future conduct. (*In re T.V.* (2013) 217 Cal.App.4th 126, 133.) Again, at most, mother was starting to change her behavior but was far from demonstrating changed circumstances.

Moreover, under section 388 the petitioner must also demonstrate a prima facie case indicating the petition request would serve the best interests of minor to warrant a hearing on the petition. (*In re C.J.W.* (2007) 157 Cal.App.4th 1075, 1079; *In re Aljamie D.* (2000) 84 Cal.App.4th 424, 431-432; § 388, subd. (d).) When considering best interests, the court should take into account the seriousness of the reasons for the dependency and reason for any continuation of the problem; the bond between minor and the parent, and with the caregivers; and the degree to which the problems may be easily ameliorated and to which they have been ameliorated. (*In re Kimberly*, *supra*, 56 Cal.App.4th at pp. 530-532.)

First, we discussed in detail the seriousness of the reason for the dependency. With mother's risky behavior and inability to care for minor, there is no doubt that the reasons for filing the petition were serious.

Second, minor was only 14 months old when she was detained. Therefore, she quickly bonded with Mr. and Mrs. G., who provided her with the structure and nurturing she needed. Minor was bonded with her caregivers. Moreover, during the dependency, mother often missed visits because she was frequently AWOL. Mr. and Mrs. G. became minor's parental figures. Although the October 5, 2017, jurisdiction/disposition report noted that minor was bonded to mother, mother never graduated to unsupervised visits with minor. Mother also testified that minor was happy to see mother at visits, but did not cry when the visits ended.

Third, regarding the degree to which mother's issues may easily be removed or eliminated, we addressed *ante* that mother has only begun to address some of her issues. Until two months prior to the hearing, mother continued her behaviors that necessitated the filing of the dependency.

Therefore, we agree with the juvenile court that mother has failed to demonstrate a prima facie case that granting the section 388 petition would be in the best interests of minor.

In re Angel B. (2002) 97 Cal.App.4th 454 is instructive. In *Angel B.*, the court affirmed a juvenile court's ruling that denied a mother a hearing on her section 388 petition based on findings that the mother failed to make the requisite prima facie showing of changed circumstances, and that the proposed change in custody was in the

child's best interests. The *Angel B.* court stated that "there is a rebuttable presumption that, in the absence of continuing reunification services, stability in an existing placement is in the best interest of the child, particularly when such placement is leading to adoption by the long-term caretakers. . . . To rebut that presumption, a parent must make some factual showing that the best interests of the child would be served by modification." (*Id.* at p. 465.) The court in *Angel B.* noted that the burden of proof "is a difficult burden to meet in many cases, and particularly so when, as here, reunification services have been terminated or never ordered. After the termination of reunification services, a parent's interest in the care, custody and companionship of the child is no longer paramount. [Citation.] Rather, at this point, the focus shifts to the needs of the child for permanency and stability." (*Ibid.*) Here, as in *Angel B.*, mother failed to make a showing that granting mother's section 388 petition was in minor's best interests. As provided *ante*, when reunification services are terminated, "the focus of the proceedings changes from family reunification to the child's interest in permanence and stability." (*In re G.B.* (2014) 227 Cal.App.4th 1147, 1163 (*G.B.*).) In this case, the juvenile court did exactly what is mandated by law—it focused on minor's permanence and stability.

B. SECTION 366.26 HEARING

Mother contends that "the court erred in terminating parental rights in light of the beneficial parental relationship that existed [between the child] and her mother."

This "may be the most unsuccessfully litigated issue in the history of law." (*In re Eileen A.* (2000) 84 Cal.App.4th 1248, 1255, fn. 5, overruled on other grounds in *In re*

Zeth S. (2003) 31 Cal.4th 396, 413-414.) While it can have merit in an appropriate case (e.g., *In re S.B.* (2008) 164 Cal.App.4th 289, 296-301), this is not such a case.

In general, at a section 366.26 hearing, if the juvenile court finds that a child is adoptable it must terminate parental rights. (§ 366.26, subds. (b)(1) & (c)(1).) This rule, however, is subject to a number of statutory exceptions (§ 366.26, subds. (c)(1)(A) & (c)(1)(B)(i)-(vi)), including the beneficial parental relationship exception, which applies when "termination would be detrimental to the child" because "[t]he parents have maintained regular visitation and contact with the child and the child would benefit from continuing the relationship." (§ 366.26, subd. (c)(1)(B)(i).)

"When applying the beneficial parent-child relationship exception, the court balances the strength and quality of the parent-child relationship in a tenuous placement against the security and sense of belonging that a stable family would confer on the child. If severing the existing parental relationship would deprive the child of 'a substantial, positive emotional attachment such that the child would be greatly harmed, the preference for adoption is overcome and the natural parent's rights are not terminated.' " (*In re B.D.* (2008) 159 Cal.App.4th 1218, 1234-1235.)

" '[F]or the exception to apply, the emotional attachment between the child and parent must be that of parent and child rather than one of being a friendly visitor or friendly nonparent relative, such as an aunt.' " (*In re Jason J.* (2009) 175 Cal.App.4th 922, 938.) The parent must show more than frequent and loving contact or pleasant visits. (*In re Dakota H.* (2005) 132 Cal.App.4th 212, 229.) " 'A biological parent who has failed to reunify with an adoptable child may not derail adoption merely by showing

the child would derive *some* benefit from continuing a relationship maintained during periods of visitation with the parent. [Citation.] A child who has been adjudged a dependent of the juvenile court should not be deprived of an adoptive parent when the natural parent has maintained a relationship that may be *beneficial to some degree*, but that does not meet the child's need for a parent.' " (*Jason J.*, at p. 937.)

"The parent contesting the termination of parental rights bears the burden of showing both regular visitation and contact and the benefit to the child in maintaining the parent-child relationship." (*In re Helen W.* (2007) 150 Cal.App.4th 71, 80-81.) This court must affirm a juvenile court's rejection of these exceptions if the ruling is supported by substantial evidence. (*In re Zachary G.*, *supra*, 77 Cal.App.4th at p. 809.) We review "the evidence most favorabl[e] to the prevailing party and indulg[e] in all legitimate and reasonable inferences to uphold the court's ruling." (*In re S.B.*, *supra*, 164 Cal.App.4th at p. 297.) Because Mother had the burden of proof, we must affirm unless there was "indisputable evidence [in her favor, which] no reasonable trier of fact could have rejected." (*In re Sheila B.* (1993) 19 Cal.App.4th 187, 200.)

In this case, although mother had a bond with minor, she failed to show that minor would benefit from continuing the relationship and that minor would be greatly harmed should parental rights terminate. As previously stated, "the parent must show more than frequent and loving contact or pleasant visits. [Citation.] 'Interaction between natural parent and child will always confer some incidental benefit to the child . . . The relationship arises from day-to-day interaction, companionship and shared experiences. [Citation.]' [Citation.] The parent must show he or she occupies a parental role in the

child's life, resulting in a significant, positive, emotional attachment from child to parent." (*In re L.Y.L.* (2002) 101 Cal.App.4th 942, 953-954, quoting *In re Autumn H.* (1994) 27 Cal.App.4th 567, 575.) The second requirement for the parental benefit exception to apply requires that mother prove that minor would benefit from continuing the relationship. (§ 366.26, subd. (c)(1)(A).) "The existence of this relationship is determined by '[t]he age of the child, the portion of the child's life spent in the parent's custody, the "positive" or "negative" effect of interaction between parent and child, and the child's particular needs.' " (*In re Jerome D.* (2000) 84 Cal.App.4th 1200, 1206, citing *Autumn H.*, at p. 576.) "In other words, for the exception to apply, the emotional attachment between the child and parent must be that of parent and child rather than one of being a friendly visitor or friendly nonparent relative, such as an aunt." (*In re Angel B.*, *supra*, 97 Cal.App.4th at p. 468.)

Here, while mother acted as a "friendly visitor" playing with toys and games, Mr. and Mrs. G. took care of the daily parenting of minor. The G. family had provided stability and permanence for minor since she was 14 months old. In contrast, mother's life was unstable, although she was starting to take some accountability for her actions that led to the dependency. For most of the dependency, mother failed to put the need for stability of minor ahead of her unstable relationship with MGM, or mother's need to run away from her problems and engage in risky behavior. Even though mother started to attend classes and therapy, there was no evidence that she participated in random tests to monitor her alcoholic consumption. At most, mother's visits with minor were merely

that of a "friendly visitor" in minor's life; not of a parental figure concerned with minor's stability and well-being.

Moreover, application of the beneficial relationship exception requires the parent to show "more than that the relationship is 'beneficial.' " (*In re Casey D.* (1999) 70 Cal.App.4th 38, 52, fn. 4.) The parent must demonstrate the relationship " 'promote[s] the well-being of the child to such a degree that it outweighs the well-being the child would gain in a permanent home with new, adoptive parents.' " (*Ibid.*; see also *In re Elizabeth M.* (1997) 52 Cal.App.4th 318, 324 [parent must occupy more than a "pleasant place" in minor's life for the beneficial relationship exception to apply]; *In re Beatrice M.* (1994) 29 Cal.App.4th 1411, 1418-1419 [beneficial relationship exception did not apply; loss of mere "frequent and loving" contact with parent was insufficient to show detriment from termination of parental rights].)

In this case, mother testified that she believed it would be harmful to minor to terminate her parental rights. Mother also stated that when minor was first removed, mother was younger and "didn't really care about what was happening. I was more worried about myself, but now I see, and I'm doing better now. I stopped drinking, not only for my daughter but for the baby I'm having right now." In closing, mother's counsel argued that mother's visits went well, and that when minor "sees Mother she is very excited and very happy, and when Mother leaves the room—the example, when Mother had to leave the room to go to the restroom, [minor] was distraught. . . . [Minor] calls Mom "Mom."

The court, in terminating mother's parental rights, after hearing mother's testimony and argument from counsel, stated:

"So clearly, [minor]'s adoptable, generally and specifically. That's clear to the Court. And then the burden shifts to Mom to show the parental-bond exception. I have no doubt that Mom is bonded to [minor], and there may be some bond from [minor] to the mother, but I can't say that is a parental bond from [minor]'s point of view. That certainly hasn't been proven to the Court. Even if it were, the Court would have to weigh if the benefits of maintaining the parent-child relationship between the natural mother and the daughter outweigh the benefits of permanency and adoption, and clearly they don't in my mind, based on the totality of the record in this case. So I'm going to find that Mom has not met her burden."

We agree with the juvenile court's assessment in this case. As noted, although minor was happy to see mother at visits, she was also happy to see her caregivers, Mr. and Mrs. G. There was no evidence that minor ever asked for mother. Minor was only 14 months old when she was detained so at the time of the trial, 16 months after detention, minor had lived longer with the G. family than with mother. Additionally, mother visited minor only once a month for two hours and the visits never became unsupervised. The beneficial exception is "difficult to make in the situation, such as the one here, where the parents have [not] advanced beyond supervised visitation." (*In re Casey D.*, *supra*, 70 Cal.App.4th at p. 51.)

In *G.B.*, *supra*, 227 Cal.App.4th 1147, the appellate court determined that substantial evidence supported the juvenile court's order that the beneficial-relationship

exception did not apply. There, the court observed that the mother had failed to meet her burden. Similar to this case, in *G.B.*, there was evidence that the mother's visits with the children went well and that her children had positive reactions to her during the visits. The court, however, noted that the juvenile court's order will be affirmed "if supported by substantial evidence, even if other evidence supports contrary conclusion." The appellate court stated that "this evidence fell short of establishing that mother's relationship with her children promoted their well-being to such an extent that it outweighed the well-being the children would gain in a permanent home with adoptive parents. [Citation.] Mother's visits with her children were always supervised, mother was only at the beginning stages of working on the effects of domestic violence in her life, and there was still instability and dysfunction surrounding her relationship with father. By contrast, the children were in a secure placement and were bonded with their current and prospective caregivers." (*Id.* at p. 1166.)

The facts in this case are similar to the facts in *G.B.*, *supra*, 227 Cal.App.4th 1147. Here, mother is only at the beginning stages of working on the reasons that brought forth the dependency case. Mother's relationship with minor does not outweigh the well-being minor would gain in a stable, permanent and loving home with the G. family—the home minor has lived in for 16 months—and the only home minor can remember since she was only 14 months old when detained. In this case, the juvenile court similarly found that mother failed to satisfy her burden of proof as provided above. We agree with the juvenile court. There was insufficient evidence that minor would benefit more from continuing her relationship with mother than from adoption.

In sum, while there is some evidence supporting a finding of a positive relationship between mother and minor, there is also evidence supporting a reasonable conclusion that minor would gain greater benefit from being placed in a permanent adoptive home with the G. family. Mother simply did not meet her burden to show that the bond between her and minor was so strong and beneficial to minor that it outweighed the benefit minor would receive from a stable, adoptive home. Mother has the burden to establish the applicability of the beneficial parental relationship exception in the lower court; on appeal, she has the burden of showing that the juvenile court's ruling was an abuse of discretion. We conclude that mother has failed to meet this burden.

DISPOSITION

The juvenile court's order denying mother's section 388 petition and the court's findings at the section 366.26 hearing are affirmed.

NOT TO BE PUBLISHED IN OFFICIAL REPORTS

MILLER
J.

We concur:

McKINSTER
Acting P. J.

RAPHAEL
J.